

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

BLUWAV SYSTEMS, LLC,

Plaintiff,

v.

EDWARD G. DURNEY,

Defendant.

CASE NO. 09-13878

HON. LAWRENCE P. ZATKOFF

OPINION AND ORDER

AT A SESSION of said Court, held in the United States Courthouse,
in the City of Port Huron, State of Michigan, on November 5, 2012

PRESENT: THE HONORABLE LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

I. INTRODUCTION

This matter is before the Court on Defendant's Motion to Vacate Rulings and Transfer Case [dkt 109]. The parties have fully briefed the motion. The Court finds that the facts and legal arguments are adequately presented in the parties' papers such that the decision process would not be significantly aided by oral argument. Therefore, pursuant to E.D. Mich. L.R. 7.1 (f)(2), it is hereby ORDERED that the motion be resolved on the briefs submitted. For the following reasons, Defendant's motion is DENIED.

II. BACKGROUND

This case arose out of Plaintiff's claim that Defendant breached a Settlement Agreement. On November 7, 2011, the Court granted Summary Judgment to Plaintiff, finding that Defendant did, in fact, breach the Settlement Agreement.

Defendant subsequently filed the instant motion, wherein he claims that the undersigned is not a federal district court judge, and that the undersigned voluntarily relinquished his seat on the bench when he elected to become a senior judge in 2004. As a result, according to Defendant, the undersigned no longer serves as a district judge and no longer holds the office of senior judge during good behavior. Defendant theorizes that the Court violates the Constitution by making rulings and passing judgment in this case.

On these bases, Defendant concludes that the Court does not have the power to decide this case, and asks the Court to vacate all of its rulings and transfer this case to “a duly appointed and properly serving federal district court judge.”

III. ANALYSIS

To support his theory, Defendant relies on a law review article purporting to answer the question of whether senior judges are unconstitutional. *See* David R. Stras, Ryan W. Scott, *Are Senior Judges Unconstitutional?* 92 Cornell L. Rev. 453. While the authors themselves are unable to provide a definitive answer to the question posed in their academic exercise, *id.* at 521, the Court fortunately finds constitutional shelter in the Supreme Court’s decision in *Nguyen v. United States*. In *Nguyen*, Justice Stevens’ opinion for the Court noted that while on appeal in the Ninth Circuit Court of Appeals, the case was before a panel that “included the Chief Judge and a Senior Circuit Judge of the Ninth Circuit, both of whom are, of course, life-tenured Article III judges who serve during ‘good behavior’ for compensation that may not be diminished while in office.” 539 U.S. 69, 72 (2003) (emphasis added) (citing U.S. Const. art. III, § 1). Defendant’s argument therefore fails.

V. CONCLUSION

Accordingly, and for the reasons set forth above, IT IS HEREBY ORDERED that Defendant's Motion to Vacate Rulings and Transfer Case [dkt 109] is DENIED.

IT IS SO ORDERED.

Date: November 6, 2012

s/Lawrence P. Zatkoff
HON. LAWRENCE P. ZATKOFF
U. S. DISTRICT COURT JUDGE